

FEB 8 2000

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION**

STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE

South Carolina Department of Insurance,)
)
Petitioner,)
)
vs.)
)
Jerome Wade,)
Respondent.)
_____)

Docket Number 99-ALJ-09-435-CC

CONSENT ORDER

This is an insurance agent license revocation case. Jerome Wade requested a public administrative hearing when the South Carolina Department of Insurance notified him of its intent to revoke his resident insurance agent license. Rather than proceed with a formal public administrative proceedings, the parties have entered into an consensual agreement resolving this matter. That agreement is discussed below.

FINDINGS OF FACT

1. On April 14, 1999, Wade pled guilty in the State of South Carolina vs. Jerome Wade, docket numbers 99-GS-40-33753, 33785 - 33791, 34778, and 40195, and was convicted by the South Carolina Circuit Court of General Sessions, Richland County, of nine felony counts of "Forgery" and one count of "Making False Statements or Misrepresentations."
2. The South Carolina Circuit Court of General Sessions, Richland County, sentenced Wade to five years on each count. However, upon the recommendation of both the Attorney General and the Richland County Solicitor, the sentence was suspended with probation for five years on the condition that Wade fully pay restitution in the amount of \$98,411.70 in that timeframe.
3. The Department learned of Wade's conviction through the Richland County Clerk of Court and the South Carolina Attorney General.
4. Section 38-43-130 of the South Carolina Code, in pertinent part, provides the Director or his designee "may revoke or suspend an agent's license after ten days' notice or refuse to reissue a license when it appears that an agent has been convicted of a crime involving moral turpitude, has violated this title or any regulation promulgated by the Department, or has wilfully deceived or dealt unjustly with the citizens of this State." Subsection (1) of that Section goes on to define "deceived or dealt unjustly" to include "misstating the facts in an application for insurance or aiding in the misstatement of the facts." *See also* S.C. Code Ann. Reg. 69-23 § 6 (1989).

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5. Federal Law prohibits any person convicted of a criminal felony involving dishonesty, breach of trust, or a violation of the Violent Crime Control and Law Enforcement Act from engaging in the business of insurance in interstate commerce without the specific written consent of the state regulatory authority, in this case the South Carolina Department of Insurance. 18 U.S.C. § 1033 (e)(2).
6. "Forgery" is a crime of moral turpitude in South Carolina. State v. Johnson, 271 S.C. 485, 248 S.E.2d 313 (1978). "Making False Statements or Misrepresentations." could easily be construed as a "crime of moral turpitude" as that phrase has been defined by the South Carolina Supreme Court. See State v. Horton, 271 S.C. 413, 414, 248 S.E.2d 263 (1978).
7. Nolan E. Brackett is the general agent of Brackett Insurance Services, which is located at 24 Woodspring Court, Columbia, South Carolina. Brackett has been licensed as an insurance agent with the South Carolina Department of Insurance for almost 20 years and has never been disciplined by the South Carolina Department of Insurance or been found to have committed a violation of the insurance laws. Brackett is interested and willing to employ Wade in his business and to provide guidance, mentoring, and proper supervision for Wade to protect insureds from any future misconduct.
8. Both the South Carolina Attorney General and South Carolina Probation, Parole, & Pardon Services have recommended that Wade be given an opportunity to pay restitution in this case.

CONCLUSIONS OF LAW

Wade was Convicted of Crimes Involving Moral Turpitude.

After a thorough review of the record, and pursuant to my findings of fact, I hereby conclude as a matter of law that Wade has been convicted of crimes of moral turpitude and has violated S.C. Code Ann. § 38-43-130 (1) (Supp. 1998).

Wade Delayed in Reporting His Convictions

Wade did not immediately report his convictions to the Department. 18 U.S.C. § 1033(e)(2) prohibits any person convicted of a criminal felony involving moral turpitude from engaging in the business of insurance in interstate commerce without the specific written consent of the state regulatory authority, in this case the South Carolina Department of Insurance. An agent should report such a conviction immediately. Wade's failure to report his convictions immediately to the Department casts doubt on his character and trustworthiness. Wade continued to transact the business of insurance 8 months after entering the plea without permission of the Department. Wade maintains that his failure to report was based upon the fact that he did not know that he had an obligation to report probationary convictions, but Wade concedes the obligation exists.

License Revocation is an Inappropriate Penalty

The revocation of an insurance agent's license is discretionary and is not statutorily mandated. The literal application of § 38-43-130 would result in denying a license to a party without regard to the nature of the violation and without regard to the circumstances presented by a particular case. Such a literal reading would create absurd results and defeat the intent of § 38-43-130 in this case. Wade is remorseful and is undergoing punishment for his wrongful conduct. Revoking Wade's license would absolutely prevent him from complying with the terms of his probation and eventually require his incarceration. By entering into this Consent Order, the Department does not condone Wade's criminal actions. However, the Department is convinced that, under the circumstances, the revocation of Wade's license would not serve the purpose of protecting the public, but would actually further harm the victims of his crimes by preventing them from recovering any money that they may have lost in their dealings with Wade.

ORDER

It is, therefore, ordered that the Department of Insurance shall not revoke Wade's license because of the convictions at issue. Rather, the parties have consented to, and are hereby ordered to comply with, the following arrangement, which has been reached by the parties as a result of negotiation and compromise, and is made in consideration of Wade's assurance that he intends to fully comply with the terms of his probationary sentence and make full restitution to for his crimes.

1. Wade must comply with all terms of his court-ordered probation, including full, timely payment of restitution. If the Department learns from South Carolina Probation, Parole, and Pardon Services that Wade has violated the terms of his probation in any way, Wade's license will be revoked without any further disciplinary proceedings.
2. Because the Department has consented to this agreement solely to allow Wade an opportunity to pay the restitution as required by his probation, Wade must remit to the South Carolina Probation, Parole, and Pardon Services a minimum monthly restitution payment of \$1,000. Wade agrees to provide proof to the Department of this payment the day it is made or the day immediately following. If Wade fails to make a payment as required, his resident insurance agent's licenses will be revoked without any further disciplinary proceedings.
3. If the Department obtains evidence that Wade has committed any further violation of the state's insurance laws during his probation, his resident insurance agent's licenses will be revoked without any further disciplinary proceedings.
4. Wade voluntarily will undergo a 30-day administrative suspension of this resident insurance agent's license. That suspension will commence on April 1, 2000 and end May 1, 2000. Within 15 days after the suspension has been lifted, Wade will provide the Department with statements from each insurer with which he was licensed prior to the suspension. These statements will declare under oath that Wade transacted no business with those insurers in that 30-day period of time.

5. Wade will begin working in a highly structured work environment supervised by Brackett. The specific arrangements of Wade's employment by Brackett will be set forth in a contract to be reviewed and approved by the Department.
6. Wade must undergo 12 classroom hours of life, accident and health continuing insurance education courses beyond the statutory requirement of S.C. Code Ann. § 38-43-106 (Supp. 1998) and provide to the Department the original certificates of attendance proving his completion of this requirement by October 1, 2000. These CE hours may not be fulfilled via correspondence courses and will not be eligible for the carry-over pursuant to Section 38-43-106. If Wade does not provide the required proof of his timely having taken the additional continuing insurance education courses, Wade's resident insurance agent's license will be revoked without any further disciplinary proceedings.
7. The Department will review Wade's progress toward repayment of his restitution one year from the date of this Consent Order and at the end of each year thereafter. This terms of this agreement will continue for the length of Wade's probation, until he pays in full the restitution he has been ordered to pay, or until such time as the Department and Wade mutually agree in writing to its termination upon review in one year.

It is further ordered that a copy of this Consent Order be immediately transmitted to the National Association of Insurance Commissioners for distribution to its member states.

This Consent Order constitutes the specific written consent of the South Carolina Department of Insurance under 18 U.S.C. § 1033(e)(2) for Jerome Wade to transact the business of insurance in interstate commerce.

This Consent Order becomes effective as of the date of my signature below.

Ray N. Stevens
Feb. 7, 2000

Hon. Ray N. Stevens
Administrative Law Judge

We Consent:

T. Douglas Concannon

T. Douglas Concannon
Associate General Counsel

South Carolina Department of Insurance
Post Office Box 100105
Columbia, South Carolina 29202-3105

Dated this 31st day of January, 2000

David Braghirol

David Braghirol
Attorney for Respondent

Law Offices of Joseph M. McCulloch, Jr.
Post Office Box 11623
Columbia, South Carolina 29211

Dated this 31st day of January, 2000

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the party(ies) or their attorney(s).

This 7th day of February, 2000
BY Beverly A. Dizon